PRELIMINARY AMENDMENT
Serial Number: 09/852,229
Filing Date: May 8, 2001
Title: TECHNIQUE FOR OPTIMIZING THE DELIVERYOF ADVERTISEMENTS AND OTHER PROGRAMMING SEGMENTS BY
           MAKING BANDWIDTH TRADEOFFS

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REMARKS

This responds to the Office Action dated on November 15, 2007.

Claims 1, 3, 5, 9-11, 13-20, 22, 24, 26, 29, 32-39, 42-43, 46-66, 69-70, 72-74, and 77-80 are amended, claims 2, 4, 21, 23, 25, 27-28, 30-31, 67-68, and 71 are canceled, and no claims are added; as a result, claims 1, 3, 5, 9-11, 13-20, 22, 24, 26, 29, 32-39, 42-43, 46-66, 69-70, 72-74, and 77-80 are now pending in this application.

§103 Rejection of the Claims

Claims 1-5, 9-11, 13-39, 42-43, 46-74 and 77-80 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Boucher et al. (WO 00/51310) in view of Ficco (U.S. Publication No. 2005/0166224).

Before directly addressing the Examiner's rejection, a brief review of the disclosure is advisable. The present patent application discloses a system for increasing a quantity of differentiable programming content available in a digital programming transmission stream. The system operates by using a plurality of individual digital programming components wherein more than one of the plurality of digital programming components are capable of being presented to a user concurrently. For example, the plurality of digital programming components may comprise a first video track, a second video track, a graphic overlay, a first audio track, and a second audio track. Several of these digital programming components can be presented to a user simultaneously such as the first video track and the first audio track or the second video track, and a graphic overlay.

To increase the quantity of differentiable programming content available, the system of the present invention allows many different programming content segments to be created by defining many different combinations of the digital programming components. Thus, the re-use of multiple different digital programming components within different programming content segments that each consist of different permutations of the digital programming components allows for a very large number of differentiable programming content segments to be created.

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Referring to the example set forth in the preceding paragraph, at least eight ("8") different permutations of different programming content segments can be created even if the different audio tracks and video tracks are not allowed to be within the same programming content segment. Specifically, the following table lists eight different possible combinations of digital programming components:

Possible combination number	Combined digital programming components
1	First audio track, first video track
2	First audio track, first video track with graphic overlay
3	First audio track, second video track
4	First audio track, second video track with graphic overlay
5	Second audio track, first video track
6	Second audio track, first video track with graphic overlay
7	Second audio track, second video track
8	Second audio track, second video track with graphic overlay

Depending on the number of different digital programming components provided and the particular restrictions placed on combining those digital programming components, a very large number of differentiable programming content segments may be created.

In the most recent office action, the Examiner rejected all the claims under 35 U.S.C. § 103(a) as being unpatentable over Boucher, et al. (WO 00/51310, hereinafter referred to as the Boucher reference) in view of Ficco (U.S. Publication No. 2005/0166224, hereinafter referred to as the Ficco reference).

The Boucher reference discloses a system and method for interactive distribution of selectable presentations. In the system of the Boucher reference, a multi-media presentation maybe distributed in a data stream on a digital network wherein the multi-media presentation is a composition of different media objects such as still frame video images, motion video images, audio, overlay graphics, and text. However, in the system of the Boucher reference, each multi-media presentation is a single self-contained presentation. The Boucher reference does not teach the transmission of multiple different multi-media presentations wherein the various different multi-media presentations are constructed from different combinations of the same set of multi-media elements.

The <u>Ficco</u> reference discloses a broadcast advertisement adapting method and apparatus. In the system of the <u>Ficco</u> reference, multiple different advertisement segments maybe received and stored in a memory. (See ad segments **22** to **28** in memory device **20** of **Figure** 2.) An ad selection factor generator **30** is then used to control a multiplexer **40** to select one of the multiple ad segments stored in the memory **20**. However, the <u>Ficco</u> reference does not disclose a system that allows multiple different digital programming components to be combined wherein more than one of the different digital programming components can be presented to a user concurrently. Thus, the system of the <u>Ficco</u> reference cannot create multiple different unique advertisement segments wherein each advertisement segment is constructed using a unique combination of different digital programming components from a transmitted set of digital programming components.

The present invention thus presents a novel feature that is not disclosed nor taught toward in the <u>Boucher</u> reference, in the <u>Ficco</u> reference, or in a combination of the <u>Boucher</u> reference and the <u>Ficco</u> reference. Specifically, as claimed in all the current independent claims of the present invention, the present invention covers a system that transmits "<u>a plurality of digital programming components, more than one of the plurality of digital programming components capable of being presented to a user concurrently</u>" such that multiple different programming content segments may be created in a receiver wherein each different programming content segment is "<u>a unique combination of digital programming components from multiple different possible combinations of said digital programming components</u>". Since neither reference nor a combination of the two references teach the claimed system, all of the amended independent claims are allowable over the cited references. The remaining dependent claims include all the limitations of these allowable dependent claims and are thus likewise allowable.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any

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of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

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CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney 408-278-4041 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.
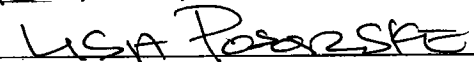
Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
408-278-4041

2/15/08

Date _____

By _____
Dag Johansen
Reg. No. 36,172

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this _____ day of February, 2008.

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Name

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